

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GASPAR RAMIREZ

Claimant

VS.

EXCEL CORPORATION

Respondent

Self-Insured

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Docket No. 198,826

ORDER

This matter is before the Workers Compensation Appeals Board on remand from the Kansas Court of Appeals.

This matter was originally before the Appeals Board on appeal from the June 21, 1996, Award of Administrative Law Judge Jon L. Frobish. In that Award, Judge Frobish granted claimant a 24 percent functional impairment, finding claimant had suffered a 47 percent loss of task performing abilities and a zero percent wage loss.

The finding of no wage loss resulted because claimant was terminated from his accommodated employment after violating one of the respondent's employee policies in that claimant provided falsified information at the time of claimant's hire. The 47 percent task loss, when averaged with the zero percent wage loss, resulted in a 23.5 percent work disability, which was less than claimant's stipulated 24 percent functional impairment. Therefore, the Administrative Law Judge awarded claimant the 24 percent functional impairment.

The Appeals Board reversed the Administrative Law Judge, finding that claimant was entitled to a 100 percent wage loss, as claimant was unemployed at the time of his regular hearing. The Appeals Board concluded that the false information in the employment application did not change the employer/employee relationship with regard to claimant's entitlement to workers' compensation benefits. In order for the employment contract to be void, sufficient to deny workers' compensation benefits, claimant's fraud would have had to have a causal relationship to claimant's injury. The Board, in analyzing the Kansas Court of Appeals' decisions in Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), and Copeland v. Johnson Group,

Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997), found neither to apply to this circumstance, as claimant had not refused post-injury employment but was instead out of work as a result of his pre-injury actions. In addition, the Board found claimant made a good faith effort to find work after the injury.

The Kansas Court of Appeals, in its decision of May 7, 1999, reversed the Appeals Board, finding that its policies set forth in Foulk, *supra*, and Perez v. IBP, Inc., 16 Kan. App. 2d 277, 826 P.2d 520 (1991), applied to this circumstance. The Court of Appeals, quoting from the dissenting opinion in the Board's Order, agreed that:

[I]t would be inappropriate for claimant to be awarded a work disability based upon his loss of wages when respondent put forth the effort to return claimant to work at an accommodated position and claimant's loss of employment resulted purely from his own actions, i.e., the falsification of his employment application at the time of his hire.

The matter was remanded to the Board with directions to enter an award limited to claimant's stipulated functional impairment of 24 percent. The Board, in following the mandate of the Kansas Court of Appeals, awards claimant a 24 percent permanent partial impairment of function to the body as a whole for the injuries suffered while employed with respondent on February 20, 1995.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated June 21, 1996, should be, and is hereby, affirmed, and an award is granted in favor of the claimant, Gaspar Ramirez, and against the respondent, Excel Corporation, a qualified self-insured, for an injury occurring on February 20, 1995, for a 24 percent permanent partial disability to the body as a whole.

Claimant is entitled to 99.6 weeks permanent partial disability compensation at the rate of \$307.28, for a 24 percent permanent partial general body disability, making a total award of \$30,605.09, all of which is due and owing at the time of this award and ordered paid in one lump sum minus any amounts previously paid.

Pursuant to K.S.A. 44-536, claimant's contract of employment with his counsel is hereby approved.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent to be paid as follows:

Underwood & Shane	
Transcript of Regular Hearing	\$ 71.00
Deposition of Jim Maher	\$525.50
Deposition of Duane Clark	\$168.00
Deposition of Gaspar Ramirez	\$430.00

Barber & Associates	
Deposition of Pedro A. Murati, M.D.	\$136.50

Ireland Court Reporting	
Deposition of Ernest R. Schlachter, M.D.	\$143.40

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
D. Shane Bangerter, Dodge City, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director